

BEFORE THE SHORELINES HEARINGS BOARD
OF THE STATE OF WASHINGTON

JAY KEATING and MIKE FUJII,

Appellants,

v.

CITY OF SEATTLE and STATE OF
WASHINGTON, DEPARTMENT OF
ECOLOGY,

Respondents.

SHB 91-10

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

This matter came on for hearing before the Shorelines Hearings Board on July 9, 1991, in Seattle, Washington. Present for the Board were Annette S. McGee, Presiding, Judith Bendor, Nancy Burnett, Paul Cyr, Bob Patrick and Chairman Harold S. Zimmerman. The Board viewed the site accompanied by the parties and party representatives. No evidence was taken during the site visit.

The matter involves an appeal to the Board challenging the City of Seattle's denial of shoreline variances, sought by Jay Keating and Mike Fujii, to construct two piers accessory to two single family residences in the Rainier Beach area of Lake Washington.

The parties were represented as follows: Appellants Jay Keating and Mike Fujii by Attorney Brian K. Leonard; Respondent City of Seattle by Margaret Klockars, Assistant City Attorney. Respondent State of Washington was not represented at the hearing. Louise M. Becker, Gene Barker and Associates, provided court reporting service.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER (1)
SHB No. 91-10

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Counsel presented argument.

3 From the testimony, exhibits and argument, the Shorelines
4 Hearings Board makes the following:

5 FINDINGS OF FACT

6 I

7 On February 27, 1990, Jay Keating, by Steve Zuvela, his agent,
8 applied for shoreline substantial development and shoreline variance
9 permits to construct new piers, accessory to single family residences
10 at 10300 Rainier Avenue South and 10304 Rainer Avenue South.

11 The piers are proposed for two adjacent lots. The City of
12 Seattle concluded that variance permits were required for each pier,
13 to allow less than a 15 foot setback from the side yard, and to allow
14 an accessory pier on a lot less than 45 feet wide.

15 II

16 The two lots involved in this matter were created by the
17 applicants in a short plat subdivision, which included a third lot.
18 As a condition of that short plat approval, the owners were required
19 to maintain the entire property under single ownership until the
20 existing structures, four cabins partially over the water, were
21 removed.

22 Permits have been approved for the construction of a single
23 family home and accessory pier on the third lot and for single family
24

1 homes on each of the other two lots. The piers for the other two lots
2 in the plat, addressed as 10300 Rainier Avenue South and 10304 Rainier
3 Avenue South, are the subject of this appeal.

4 III

5 Under the City's Master Program, the land portion of the lots is
6 located in the Urban Residential (UR) environment, and the submerged
7 portion is in the Conservancy Recreation (CR) shoreline environment.

8 The lot at 10300 Rainier Avenue South is 33.32 feet wide at the
9 street lot line, and approximately 40 feet wide at the existing
10 bulkhead. The lot at 10304 Rainier Avenue South is 32.32 feet wide at
11 the street lot line and approximately 41 feet wide at the bulkhead.
12 The width of each lot at the inner harbor line is 48.86 feet. The
13 Ordinary High Water line is at the bulkhead. The proposed pier on
14 each lot would be closer to a side yard property line than 15 feet,
15 which requires variances under the City's Master Program.

16 IV

17 Seattle's Shoreline Master Program permits piers only when the
18 lot is at least 45 feet wide, except where the pier is shared with the
19 owner of an adjacent lot, Section 23.60.204, Seattle Municipal Code.
20 Section 23.60.962, Seattle Municipal Code, specifies that the lot
21 width measurement is to be made at the line of Ordinary High Water

22 V

23 The City of Seattle denied Appellants' requests for shoreline
24

1 variance permits. The City of Seattle determined that no hardship had
2 been or could be demonstrated, and precedent could be set. Since
3 variances were necessary, the shoreline substantial development
4 permits for the piers also were denied.

5 VI

6 Appellants identified several lots in the area less than 45 feet
7 wide, which have individual piers. No facts were presented when these
8 piers were built, or whether shoreline permits were applied for or
9 received. The City had no record of shoreline variance permits having
10 been issued for piers on lots narrower than 45 feet in this immediate
11 vicinity.

12 VII

13 Any Conclusion of Law deemed to be a Finding of Fact is hereby
14 adopted as such.

15 From these Findings of Fact, the Board makes these

16 CONCLUSIONS OF LAW

17 I

18 The Board has jurisdiction over the parties and subject matter of
19 this action RCW 90.58.180.

20 II

21 Appellants bear the burden of proof in their challenge to the
22 denial of the shoreline variances and substantial development permits.
23 RCW 90.58.140(7).

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III

We conclude that the width of the lots for purposes of determining side yard setback is at the Ordinary High Water line, Seattle Municipal Code Section 23.60.962. Shoreline variance permits are necessary, if the piers are to be built as proposed.

IV

A shoreline variance permit can only be granted where there are:
unique or extraordinary circumstances relating to the property, such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020, (the Shoreline Management Act).
WAC 173-14-150

In addition, appellants have to demonstrate the other factors listed in WAC 173-14-150(3), and by reference WAC 173-14-150(2)(b)-(e).

V

We conclude that the circumstances presented here are not unique or extraordinary as required by the regulations, but instead are fully contemplated by the provisions of Seattle's Shoreline Master Program.

Further, appellants have not proven that strict application of the lot width and setback requirements preclude a reasonable use of the property. WAC 173-14-150(3)(a). A joint use pier can be permitted and built.

Any hardship that might possibly exist is from appellants' own actions, when they short-platted the property into the multiple lots. WAC 173-14-150(3)(b), referencing WAC 173-14-150(2)(b).

Lastly, the granting of shoreline variance permits could create a precedential effect and cumulative impact, WAC 173-14-150(4).

VI

In summary, we conclude that the City of Seattle's denial of the shoreline variance permits was consistent with their Shoreline Master Program and WAC 173-14-150.

V

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters the following:

ORDER

The City of Seattle's denial of the shoreline variance permits is hereby AFFIRMED.

DONE this 16th day of September, 1991.

SHORELINES HEARINGS BOARD

Annette S. McGee
ANNETTE S. MCGEE, Presiding

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Chairman

Judith A. Bendor
JUDITH A. BENDOR, Member

Nancy Burnett
NANCY BURNETT, Member

Paul Cyr
PAUL CYR, Member

Bob Patrick
BOB PATRICK, Member

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